

IN THE MATTER of The Ontario Human Rights Code, R.S.O. 1970, Chapter 318

AND IN THE MATTER of the complaint made by Mr. Maurice Williams of Windsor, Ontario, that he was denied employment because of his race and colour by Mr. Martin Ouellette of Emeryville, Ontario.

### DECISION

I was appointed by the Honourable Fern Guindon, the Minister of Labour, as a Board of Inquiry under The Ontario Human Rights Code, R.S.O. 1970, c.318, to inquire into the complaint made by Mr. Maurice Williams of Windsor, Ontario, that he was denied employment because of his race and colour by Mr. Martin Ouellette of Emeryville, Ontario. The appointment was dated July 5, 1972, and, although it provided that I was to report to The Ontario Human Rights Commission "in accordance with the said Act", the Code had, effective April 17, 1972, that is, prior to the date of my appointment, been amended by 1971, Vol. 2, c.50, s.63, in such a way that a Board of Inquiry appointed to inquire into a complaint no longer reports to the Commission but, instead, itself makes a decision. This, then, in accordance with the Code, is my decision.

The course of these proceedings has been long, and, because of the legislative changes of which the one already mentioned is only part, together with the application of The Statutory Powers Procedure Act, 1971, Vol.2, c.47, to proceedings under The Ontario Human Rights Code, unusually complicated, so complicated, in fact, that an explanation is necessary. The hearing began on September 21, 1972 at the Court House in Windsor, and, when it became apparent that Mr. Martin Ouellette, the respondent, was neither present nor represented, I became concerned about the propriety or wisdom of permitting the hearing to proceed in his absence. Mr. Sydney Goldenberg, who then, and throughout these proceedings, appeared on behalf of the Ontario Human Rights Commission, satisfied me that Mr. Ouellette knew the date, time and place of



the commencement of the hearing. Indeed, it appeared that he had, as a prospective witness, been served with a summons and conduct money under the authority of section 11 of the Statutory Powers Procedure Act, 1971, returnable on September 21st, 1972. In addition, he had, in a series of letters from the Commission, been notified of the time, date and place of the hearing as well as of the identity of the chairman of the Board of Inquiry. He had not, however, as a party, been served in the manner required by The Statutory Powers Procedure Act, 1971, s.6, which requires that reasonable notice of the hearing shall be given by the tribunal, that is, by the board of inquiry. While no fault can be found in the omission to change the procedure by which parties were notified, given the limited period of time to adjust to the change in procedure brought about by the statutory amendments, it seemed to me that the fairest course to pursue was to adjourn the proceedings to permit me to cause proper notice to be given to the respondent. I accordingly adjourned the hearing to a date to be fixed by me and I eventually directed that the hearing should begin on December 8, 1972 at 9:30 a.m. at the Court House in Windsor.

On November 22, 1972, by prepaid registered post, I sent to both the complainant and the respondent a notice, complying with the requirements of The Statutory Powers Procedure Act, 1971, (together with a copy of the complaint as required by the Code) of the hearing to be held on Friday, December 8, 1972 at 9:30 a.m. in His Honour Judge McDonald's Chambers at the Court House in Windsor. On that date, the complainant and Mr. Goldenberg appeared before me at the time and place appointed but, again, Mr. Ouellette failed to appear, either personally or by agent or counsel. I was advised by Mr. Goldenberg, after informing him that I had not received evidence that the notice which I had sent had, in fact, been received by Mr. Ouellette, that his investigation had disclosed that the respondent had been informed



that there was a registered letter awaiting him at the post office but that he had not, in fact, been put in possession of the registered notice and therefore could not know its contents. Certain that Mr. Ouellette had not been given actual notice of the hearing of December 8, 1972, I again decided to adjourn the hearing to a new date to be fixed by me.

The new date was March 7, 1973 and, although I was able to serve notice of the date, time and place personally upon the complainant, I was unable to do so in respect of the respondent. I had enlisted the good offices of the Ministry of Justice as a result of which the Ontario Provincial Police were instructed to serve the notice upon Mr. Ouellette. In due course, I was advised that the Ontario Provincial Police were unable to effect personal service and had learned that Mr. Ouellette could not be located. When I was so informed, I decided to exercise the power given by section 24 of The Statutory Powers Procedure Act, 1971, to effect service by public advertisement. Accordingly, I caused a notice of the hearing on March 7, 1973 at the Court House in Windsor to be inserted in the Windsor Star on February 22, 1973. By inadvertence that published notice omitted to state the time of the hearing and when this was brought to my attention I caused another and complete notice, to be inserted in the Windsor Star on March 6, 1973. This notice, similar to that published on February 22 with the exception of the addition of the time of the hearing, was in the following language:

"IN THE MATTER of The Ontario Human Rights Code,  
R.S.O. 1970 c. 318 as amended

AND IN THE MATTER of a complaint by Mr. Maurice  
Williams Against Mr. Martin Ouellette

TO: Mr. Martin Ouellette,  
formerly of:  
Swingland Tavern,  
R. R. No. 2,  
Belle River, Ontario.

NOTICE OF HEARING

Take notice that a hearing of the Board of  
Inquiry will be held on Wednesday, the 7th day  
of March, 1973 in the Chambers of His Honour,





Judge MacDonald in the Essex County Court House, 245 Windsor Avenue, in the City of Windsor at the hour of 10 o'clock in the forenoon under the authority of The Ontario Human Rights Code, to hear and decide the complaint of Mr. Maurice Williams that, on or about the 23rd day of March, 1972, he was denied employment by Mr. Martin Ouellette because of his race and colour, contrary to Section 4(1) of The Ontario Human Rights Code. This notice is published under the authority of The Statutory Powers Procedure Act, 1971, chapter 47, section 24(1).

Take notice that, if you do not attend at the hearing, the Board of Inquiry may proceed in your absence and you will not be entitled to any further notice of the proceedings.

A copy of the complaint in this matter may be inspected at the office of the Ontario Human Rights Commission, Metro Trust Building, Room 605, 500 Ouellette Avenue, Windsor, Ontario.

DATED at London, Ontario, this 20th day of February, 1973.

HORACE KREVER, Q.C.,  
Chairman,  
Board of Inquiry."

On March 7, 1973, Mr. Ouellette again failed to appear, and when I was advised by Mr. Goldenberg that he had not communicated with the Windsor office of the Ontario Human Rights Commission, I concluded that, in the light of the respondent's failure to appear on September 21, 1972, and his failure to appear on March 7, 1973, or communicate in any way with the Windsor office of the Commission in response to the advertisements of February 22, 1973, and March 6, 1973, his failure to appear was not because he had not been given reasonable notice, but rather was the result of a conscious decision to absent himself from the hearing. Accordingly, pursuant to the provisions of section 7 of The Statutory Powers Procedure Act, 1971, I directed that the hearing should proceed in the absence of Mr. Ouellette.





In turning now to the merits of these proceedings, I express at once my acknowledgment that in weighing the evidence that was adduced at the hearing, I was, by reason of the respondent's failure to attend, deprived of the assistance of his, or his counsel's, cross-examination of the witnesses called by the Commission and of his own testimony. For this reason, I took pains to ask the witnesses more questions than I would normally do and to consider the evidence very carefully. Having done so, I am able to say that, although the evidence was circumstantial in nature, I have no doubt that Mr. Ouellette did refuse to employ Mr. Williams because of his race and colour.

Mr. Maurice Williams is a black person who came to Canada from Jamaica. In March 1972, he was a journeyman bricklayer and was so registered with the Windsor Manpower office because he was seeking work in this field. Mr. Martin Ouellette is a contractor who was then living at the Swingland Tavern in Emeryville, near Windsor, and had two or more construction contracts one of which involved bricklaying. On the morning of March 22, 1972, Mr. Ouellette placed an order with the Manpower office for two journeymen bricklayers and received from Mr. E. A. Dummer, a Manpower counsellor, the names, addresses and telephone numbers of five qualified registrants, one of whom was Mr. Williams. On the evening of March 22, 1972, Mr. Ouellette telephoned Mr. Williams' home and asked to speak to Mr. Maurice Williams. When he was told that it was Mr. Maurice Williams to whom he was speaking he asked him if he spoke French and was told that he did not. Mr. Ouellette then said "That's okay, I will pick you up at 7:30 in the morning for work." It appears that he made this offer because of the difficulty that Mr. Williams might have in locating the job site. At some time between eight and nine o'clock in the morning of March 23, 1972, a man, who I find was the respondent, Mr. Martin Ouellette, drove up in his pick-up truck to Mr. Williams' home, went to the door and either



knocked or rang. Mr. Maurice Williams went to the door and, according to his testimony, which I accept, a look of surprise came over Mr. Ouellette's face and he then said, "Are you Mr. Williams?" Mr. Williams replied that he was whereupon Mr. Ouellette asked, "Mr. Maurice Williams?" to which he again received an affirmative answer. Mr. Ouellette then said, "Okay, I will soon be back. I am going uptown to get some gas," and departed. He never returned. Mr. Ouellette subsequently admitted to Miss Jo-Ann Jenkins, a Human Rights Officer employed by the Ontario Human Rights Commission, at its Windsor office, and who was investigating the complaint made by Mr. Williams, that this conversation did, in fact, take place but he explained that he left to visit the job site to see that the materials had arrived. I do not accept either explanation for Mr. Ouellette's departure without Mr. Williams. His subsequent conduct, including his failure to communicate with Mr. Williams at any later time to explain his sudden departure, his attendance in June at Mr. Williams' home where he spoke to his mother and told her that he would eventually have a job for her son, an attendance made only after he became aware that a complaint had been made under The Ontario Human Rights Code, his misleading of Miss Jenkins as to a place where he would meet her to discuss the complaint, and his failure to keep firmly made appointments with her, confirm the inference which I have drawn that, having arranged, on March 22, 1972, to pick Mr. Williams up to drive him to work on March 23, he decided not to employ him when he discovered, upon seeing him, that he was black.

The relevant provision of The Ontario Human Rights Code, R.S.O. 1970, c.318, is section 4(1), as it read on March 23, 1972 (i.e. before the amendment made by 1972, c.119, section 5 which did not come into force until June 30, 1972). Section 4(1) then read as follows:

"No employer or person acting on behalf of an employer shall refuse to employ or to continue to employ any person or discriminate against any person with regard to employment or any



term or condition of employment because of his race, creed, colour, nationality, ancestry or place of origin."

As I have indicated, it is my decision that Mr. Ouellette contravened this provision of the Code.

Section 14 c(b) of the Code, as amended by 1971, Vol.c.50, s.63, which was proclaimed in force on April 17, 1972, empowers me to order "any party who has contravened this Act to do any act or thing, that, in the opinion of the board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor." In attending to this aspect of my function, I express the opinion that to order the respondent to write letters to the complainant and others apologizing for his contravention of the Code and undertaking to refrain from contravening the Code would be an exercise in futility. An apology that is not sincere is a disservice to the policy of the Code, and a future contravention of the Code renders one liable to the proceedings provided for in the Code. Although Mr. Williams may not need or, indeed, want employment by Mr. Ouellette in the future, and despite the difficulties inherent in the enforcement of an order of this kind, I am prepared to accede to the submission of Mr. Goldenberg, on behalf of the Commission, that, Mr. Martin Ouellette, when he is next in need of the services of a journeyman bricklayer for the purposes of his contracting business, be required to offer employment to Mr. Williams and I so order.

It is my view that Mr. Ouellette should also be required to compensate Mr. Williams for the injury caused to him by contravening the Code. The evidence as to the appropriate compensation was not very helpful, but an attempt must nevertheless be made to assess his loss. From the date of the contravention by Mr. Ouellette, i.e., from March 23, 1972, until March 30, 1972, Mr. Williams was unemployed. From March 30 to June 6 he was






underemployed, in the sense that he could find no work at his trade but was forced to do unskilled labour at \$3.85 per hour as contrasted with the going rate in his trade of \$10.00 per hour. He was again unemployed from June 7 to July 22 when he again obtained temporary "underemployment" until August 23. However, what makes matters more difficult is that the evidence leads one to the conclusion that Mr. Ouellette's contracting business was of so insubstantial a nature that the duration of employment by him of a bricklayer was not likely to be long-lasting. There was some evidence that Mr. Ouellette was seeking a bricklayer simply as a replacement for an assistant who was in hospital for a short time during the period when Mr. Ouellette had a contract to do the brick work on a residential house. Mr. Goldenberg submitted, and I accept as a reasonable assessment, that this need lasted two weeks. At the rate of \$6.00 per hour that, according to the evidence, Mr. Williams would have received had he been employed by Mr. Ouellette for the full two weeks, (on the basis of a five day week of forty hours per day) a gross figure is arrived at of \$400.00. However, from this amount must be deducted the amount Mr. Williams was receiving between March 30 to June 6 when he was receiving \$3.85 per hour. When one also takes into consideration the evidence that, during this period, the weather conditions were such as to inhibit outdoor work on a regular basis, it is again reasonable to accept Mr. Goldenberg's submission that Mr. Williams' employment would have been on a half-time basis. According to my calculations, a very conservative estimate would produce a loss of \$108.00. Accordingly, I have concluded that to compensate Mr. Williams for the loss which he suffered by reason of Mr. Ouellette's violation of the Code, Mr. Martin Ouellette should be required to pay to Mr. Williams the sum of \$108.00 forthwith and I so order.

Section 24 of The Statutory Powers Procedure Act, 1971, requires that where the tribunal is of the opinion that it is impractical



to send its decision to a party, it may cause reasonable notice of its decision to be given to that party by public advertisement or otherwise as it may direct. In my opinion, however, the obligation to provide the parties with a copy of the decision, which is the basis of the authorization, in section 24 to advertise, does not apply to a party to the proceedings who has not taken part in the hearing under such circumstances as those which occurred in this case. Accordingly I shall not communicate this decision to Mr. Ouellette by advertisement. Furthermore, as the evidence, obtained in the attempt to have my notice to Mr. Ouellette served on him personally, discloses that he is no longer living at the Swingland Tavern in Emeryville, his address "last known to the tribunal", to use the language of s.18 of The Statutory Powers Procedure Act, 1971, I shall not send a copy of this decision to Mr. Ouellette by first class mail addressed to him at that address. I interpret section 7 of The Statutory Powers Procedure Act, 1971 which provides that "[W]here notice of a hearing has been given to a party to any proceedings in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in his absence and he is not entitled to any further notice in the proceedings" as relieving the tribunal from the normal obligation of providing a party with a copy of its decision where that party has, as Mr. Ouellette has done, failed to attend at the hearing after having been given reasonable notice of it.

DATED at London, Ontario, this 3rd day of July, 1973.

  
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Horace Krever, Q.C.

